

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

JAJ Ventures, Inc., a North Dakota)
Corporation, Gelato d' Italia, LLC, a)
North Dakota limited liability company,)
JH Card & Gift Shop, LLC, a North Dakota)
limited liability company, Insyndio, LLP, a)
North Dakota limited liability partnership,)
Jason Fettig, and Joseph Vadais,)

Plaintiffs,)

vs.)

Raymond Arjmand and Gateway Fashion)
Mall, LLC, a Delaware limited liability)
company,)

Defendants)

ORDER

Case No. 1:09-cv-037

Defendants, in their amended answers filed on March 11, 2010, asserted as a defense that “[t]his Court does not have subject matter jurisdiction to adjudicate the plaintiffs’ claims.” See Docket Nos. 39 and 40, ¶ IX. Plaintiffs responded by filing with the court on April 1, 2010, a Motion to Strike Affirmative Defenses. They contend that Defendants’ amended answers are internally inconsistent in that they assert lack of jurisdiction as a defense while simultaneously admit the facts supporting jurisdiction. They further aver that Defendants should not be permitted to assert lack of jurisdiction as a defense given that they had removed the action to this court.

Defendants filed a response in opposition to Plaintiffs’ motion on April 15, 2010. They take issue with Plaintiffs’ assertions that their answers are internally inconsistent and that they waived any objection to this court’s exercise of jurisdiction.

Whether Defendants defense is stricken from the pleadings is largely academic, as the issue

of jurisdiction may be revisited at anytime. A party may raise the issue on motion. See Fed. R. Civ. P. 12(b)(1). The court may also raise the issue *sua sponte*. See Fed. R. Civ. P. 12(h)(3); Bueford v. Resolution Trust Corp., 991 F.2d 481, 485 (8th Cir. 1993) (opining that the lack of subject matter jurisdiction cannot be waived and may be raised at any time by a party to an action, or by the court *sua sponte*); Thomas v. Basham, 931 F.2d 521, 523 (8th Cir. 1991) (stating that federal courts are obligated to consider their jurisdiction shall raise jurisdictional issues *sua sponte* when there is an indication that jurisdiction is lacking, even if the parties concede the issue). Plaintiffs' motion (Docket No. 43) is therefore **DENIED**.

Dated this 26th day of April, 2010.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr.
United States Magistrate Judge